

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Silviu Borac  
Serial No. 10/062,192  
Filed: February 1, 2002  
Title: Computer Graphics System And Computer-Implemented Method For  
Generating Smooth Feature Lines For Subdivision Surfaces.  
Group Art Unit: 2671  
Attorney Docket: MENT-062

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PETITION FOR REVIVAL OF UNAVOIDABLY ABANDONED APPLICATION

Dear Sir or Madam:

The Applicant hereby respectfully petitions the Commissioner of Patents and Trademarks to revive the above-identified application under the provisions of 37 C.F.R. 1.137(a) on the grounds that the application was unavoidably abandoned. The last communication sent by the USPTO to then counsel of record in this case, Mr. Richard Jordan, was a Notice of Abandonment mailed November 30, 2004. The Notice included a copy of an "Examiner Interview Summary" indicating that the Examiner called Mr. Jordan on November 4, 2004 and informed him that the application had been abandoned. Mr. Jordan at that time never filed a response or advised the Applicant/assignee of this fact (either of the requirement of the response, or the fact of abandonment).

Factual Basis: The basis for this Petition is that the Applicant's former U.S. patent counsel Mr. Richard Jordan, Reg. No. 27,807, failed to advise the Applicant/assignee corporation, based in Germany, that the above-listed application and 11 others, among the dozens of U.S. and international patent and trademark applications Mr. Jordan was prosecuting for the assignee, had gone abandoned. In fact, when the assignee made inquiries over the years, Mr. Jordan continued to assure the assignee that the assignee's patent portfolio, including the 12 now-abandoned applications, was being properly handled by him. He also continued to attend to new matters, such as new prosecution work and paying a patent issue fee for the assignee in April, 2005. Yet he completely failed to respond to, or advise Applicant/assignee of Notices of Missing Parts or

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other Office Actions or Notices of Abandonment in the 12 U.S. patent applications, all of which appear to have been mailed to his current office address. More recently, Mr. Jordan essentially “disappeared”, failing to answer emails, calls, faxes or other communications for several months. Although to our knowledge, a rigorous medical evaluation has not been undertaken, on June 23, 2005, Dr. Ulrich Herken, M.D., traveled to Mr. Jordan’s home office, at the request of Rolf Herken (who is based in Germany) and spoke with Mr. Jordan. Dr. Herken came away from that meeting concerned about Mr. Jordan’s mental state and his ability to handle the assignee’s patent portfolio. See attached Declaration of Dr. Ulrich Herken.

These circumstances are attested to in the attached Declarations of Rolf Herken, and Ulrich Herken, M.D.

No Intention or Authorization to Abandon: It was never the Applicants’ or the assignee’s intention to abandon these applications, which are central to the continued success of the assignee corporation. No authorization was given to abandon.

Abandonment Unavoidable by a Client’s Reasonable Care: Given the level of trust that the Applicants/assignee had in Mr. Jordan, with whom they had worked for nearly a decade, and who successfully prosecuted U.S. patent and trademark applications on behalf of the assignee (one of which issued as recently as June, 2005), and which collectively represented nearly \$1 million in legal fees over the years, the Applicants/assignee had no reason to question Mr. Jordan’s assurances in response to assignee’s inquiries over the years as to case status, and no reason to believe any cases had gone abandoned, and thus the exercise of a reasonable client’s diligence or care could not have avoided the abandonment.

When Discovered: While the Applicants/assignee and the undersigned new patent counsel understand that the subject application has been abandoned since October 19, 2004 (six months after the mailing of a April 19, 2004 Office Action), the Applicants/assignee and the undersigned new patent counsel first became aware of the abandoned status on July 12, 2005.

How Delay in Discovery Occurred: The chronology leading up to this discovery can be summarized as follows (see attached Declarations for details): The assignee had worked with Mr. Jordan since 1994, and the parties by all accounts had a good working relationship. In late 2004, Mr. Jordan indicated that his home computer suffered a breakdown. The assignee arranged for IT assistance to help Mr. Jordan recover from that breakdown. The assignee also requested a status chart, which Mr. Jordan promised to provide, but never did. Thereafter, Mr. Jordan essentially “disappeared”, failing to respond to emails, telephone calls, faxes or other communications. Concerned about Mr. Jordan as well as the patent portfolio, the assignee contacted the undersigned on June 9, 2005, and the undersigned suggested (1) further attempts to contact Mr.

Jordan and (2) status checks of all the assignee's pending U.S. patent applications. (On knowledge, Mr. Jordan was the assignee's sole U.S. patent counsel.)

The first task in undertaking status checks was for a complete internal review of assignee's patent portfolio, which includes dozens of U.S. and foreign patent applications and patents. Communications ensued between the undersigned new patent counsel (including collectively the undersigned patent attorney and his colleagues) and the assignee in Germany. The assignee did not have immediately available a reliably complete list of such filings (a list they had previously requested from Mr. Jordan), and particularly, a reliably complete list of pending U.S. patent applications. Once such a list was developed, the undersigned patent counsel generated Powers to Inspect. The Powers were sent to Germany for signature and returned, and inspections began. In the interim, Rolf Herken asked his cousin Dr. Ulrich Herken, M.D., to visit the home office of Mr. Jordan who had not returned calls, emails or other communications for several months. The visit transpired on June 23, 2005, as noted above, and Rolf Herken advised the undersigned about that visit on July 12, 2005. See Declaration of David A. Jacobs, Reg. No. 31,770, Applicants'/assignee's new patent counsel.

Subsequently, based on inspection of the USPTO files, the undersigned, and thus the assignee, learned of the abandoned status of the above-noted twelve U.S. patent applications on July 12, 2005. Prior to that time, the assignee had no reason to believe that any cases had gone abandoned. Upon receiving the information, the undersigned expeditiously undertook the follow-up investigations, review, discussions and document iterations with the German-based assignee/client necessary to prepare and file this Petition. During that process, the undersigned prepared, in consultation with Rolf Herken, a Letter from Mr. Herken to the USPTO, which was filed on July 25, 2005 soliciting input from the USPTO on an appropriate way to proceed, which input was provided. See the attached Declarations of David A. Jacobs and Rolf Herken.

Entire Delay Unavoidable: Applicants submit that in view of these circumstances, the entire delay in filing the attached Response to the Office Action, from the due date of such Response until the filing of this grantable petition, was unavoidable.

Entire Delay Unintentional: If the Commissioner is not disposed to grant this Petition under 37 C.F.R. 1.137(a), then in the alternative, the Applicants respectfully request relief under 37 C.F.R. 1.137(b) (unintentional abandonment), since it was never the Applicants' intention that the subject application be abandoned.

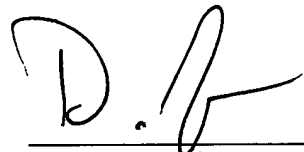
Applicants submit that in view of these circumstances, the entire delay in filing a Response to the Office Action, from the due date of such Response until the filing of this grantable petition, was unintentional.

This Petition is accompanied by the required petition fee (the undersigned has authorized the use of the Gesmer Updegrove LLP Deposit Account No. 122-315 for payment of the higher "unintentional" fee, in the event the Commissioner is not disposed to grant this Petition under the "unavoidable" standard); and a verified showing of the reasons for the unavoidable delay, including the attached Declarations of Rolf Herken, Dr. Ulrich Herken, M.D., and the Applicant's new patent counsel, David A. Jacobs, Reg. No. 31, 770. Also attached hereto is a proposed response to the outstanding USPTO Office Action to which Applicants' former counsel never responded.

The Applicants submit that the reasons for the unavoidable delay, as fully set forth in the accompanying Declarations, provide adequate basis for the revival of the present application, and the same is thus respectfully requested.

Respectfully submitted,

Date: 8/4, 2005

  
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